

Do These Regulations Affect Me?

These regulations apply to owners and operators of animal feeding operations (AFOs) that are CAFOs because they meet certain conditions. If your animal operation meets those conditions, it is regulated and you must apply for an NPDES permit. The following sections describe the animal operations that are regulated to help you to figure out whether your operation is covered.

What animal feeding operations do the regulations cover?

All concentrated animal feeding operations, or CAFOs, are covered by these regulations. A CAFO is a specific kind of AFO. The regulations describe which AFOs are considered CAFOs. To be regulated as a CAFO, your operation must first meet the regulatory definition of an AFO.

GLOSSARY

40 CFR 122.23 (b)(1) defines *animal feeding operation (AFO)* as a lot or facility (other than an aquatic animal production facility) where the following conditions are met: (1) animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, **and** (2) crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

Your animal operation is affected by these regulations if it meets the regulatory definition of an AFO **and**

- It meets the regulatory definition of a CAFO **or**
- It has been designated as a CAFO by the state or EPA.

What is an AFO?

An AFO is an animal feeding operation that meets both of these conditions:

1. The animals are confined for at least 45 days during any 12-month period.

The 45 days of confinement do not have to be 45 days in a row, and the 12-month period can be any consecutive 12 months.

2. Crops, forage growth, and other vegetation are not grown in the area where the animals are confined.

This does not mean that any vegetation at all in a confinement area would keep an operation from being defined as an AFO. For example, a confinement area like a pen or feedlot that has only “incidental vegetation” (as defined by your permitting authority) would still be an AFO as long as the animals are confined for at least 45 days in any 12-month period.



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Hog confinement facility.



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Confined cattle feeding operation.

Pasture and rangeland operations are not AFOs because the animals are not confined or concentrated in an area where manure builds up. However, a pasture or grazing-based operation might also have additional areas such as feedlots, barns, or pens that meet the conditions described above to be defined as an AFO.

Winter feedlots can still be AFOs even if the feedlot area is used to grow crops or forage when animals are not confined there. In the case of winter feedlots, the “no vegetation” condition applies to the time when the animals are confined there.

The AFO definition is not limited to the animal types discussed in the regulations. An operation that confines any type of animal and meets both of the conditions in the definition is an AFO. In addition to confinement areas at animal production facilities, confinement areas at auction houses, sale barns, livestock marketing areas, horse show arenas, and stable areas of racetracks can be considered AFOs if they meet both of the conditions in the definition.

 Regulation: 40 CFR 122.23(b)(1) [68 FR 7265]

Preamble: IV.A.1 [68 FR 7188]

If you confine an animal for any portion of a day, you should count the animal as being confined for that day. For example, a facility maintains a herd of beef cattle on pasture. This facility also includes a hospital area where cattle are confined for medication. Cattle are confined in the hospital area 5 days each month for medication. The cattle are confined for a total of 2 hours each time they are medicated. These cattle are counted as being confined for 60 days each year (5 days/month × 12 months) even though they are not confined for a full day.

What is a CAFO?

For a facility to be a CAFO, it must first meet the regulatory definition of an AFO (see “What is an AFO?” on page 7 of this guide). A CAFO is an AFO that has certain characteristics. There are two ways for an AFO to be considered a CAFO:

- An AFO may be **defined** as a CAFO **or**
- An AFO may be **designated** a CAFO.

 Regulation: 40 CFR 122.23(b)(2), (4), (6), and (9) [68 FR 7265 and 7266]

Preamble: IV.A.2 [68 FR 7189]

Which AFOs are defined as CAFOs?

An AFO can be defined as a CAFO if it has a certain number of animals and it meets the other criteria contained in the regulations. The regulations set thresholds for size categories based on the number of animals confined at the operation for a total of 45 days or more in any 12-month period. Tables provided later in this chapter show the thresholds for Large, Medium, and Small CAFOs for different kinds of animals.

Large CAFOs

An operation is defined as a Large CAFO if it

- Meets the regulatory definition of an AFO **and**
- Meets the Large CAFO threshold for that animal type.

Medium CAFOs

An operation is defined as a Medium CAFO if it

- Meets the regulatory definition of an AFO;
- Meets the Medium CAFO thresholds for that animal type; **and**
- Meets at least **one** of the following two criteria (called “discharge criteria”):
 - A man-made ditch, pipe, or similar device carries manure or process wastewater from the operation to surface water **or**
 - The animals come into contact with surface water that runs through the area where they’re confined.



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The discharge criteria apply to only the parts of the operation where you confine animals, store manure or raw materials, and contain waste. For example, if you dig a ditch or install a pipe that drains water from your confinement area into a stream or lake, your operation would meet the first discharge criterion. Open tile drains in the areas where animals are confined, wastes are collected and stored, or raw materials are kept also meet the first criterion if the tile drains carry pollutants from these areas to surface water. Your operation meets the second discharge criterion if a stream runs through the confinement area and the animals have direct access to the stream.

If you own two or more AFOs that

- Are next to each other **or**
- Use a common waste disposal area or system,

you should count all the animals at all the operations together to determine whether your operations fall within the thresholds for the CAFO size categories. If both of your operations use a common waste disposal area or system, they are counted as one even if they're not next to each other. (Two operations under common ownership are considered to have a common waste disposal system if the manure, litter, or process wastewater from the two operations is mixed before disposal or land application or if the manure, litter, or process wastewater from the two operations is applied to the same land application area. Common waste disposal systems also include any other type of system where the wastes from two operations are commingled for handling or disposal.)

Also, if an operation is entirely located on one site but ownership of the operation is split between two or more people, you should still count all the animals at that operation to know if it falls within the thresholds for the CAFO size categories.

Which AFOs may be designated as CAFOs?

The second way for an AFO to be a CAFO is to be designated as a CAFO. If an AFO doesn't meet the definition of a Large or Medium CAFO but the permitting authority finds it to be a significant contributor of pollutants to surface waters, the permitting authority may designate that operation as a CAFO. To designate an AFO as a CAFO, the permitting authority must inspect the AFO and must find that the operation is a significant contributor of pollutants to surface waters.

Medium CAFOs

AFOs that fall within the size thresholds for Medium CAFOs but don't meet either of the two discharge criteria may be designated as CAFOs by the permitting authority.

An AFO might not meet the definition of a CAFO if

- *It doesn't confine enough animals.*
- *It doesn't meet the discharge criteria (for Medium CAFOs).*
- *It confines a type of animal not included in the Large and Medium CAFO definitions.*

Small CAFOs

AFOs that don't confine enough animals to meet the Medium CAFO size threshold may be CAFOs only by designation. The permitting authority may designate a small AFO as a Small CAFO only if the AFO is a significant contributor of pollutants to surface waters **and** it meets at least one of two discharge criteria:

- A man-made ditch, pipe, or similar device carries manure or process wastewater from the operation to surface water **or**
- The animals come into contact with surface water that runs through the area where they're confined.

EPA and the United States Department of Agriculture (USDA) promote efforts by states to use approaches other than NPDES permitting to help medium and small AFOs to avoid having conditions that would result in those facilities' being defined or designated as CAFOs. For example, the voluntary development and implementation



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Runoff from this livestock yard could enter a nearby stream and degrade the water quality. Such conditions might be the basis for designating an AFO as a Small CAFO.

of a Comprehensive Nutrient Management Plan (CNMP) prepared in accordance with the CNMP Technical Guidance issued by USDA's Natural Resources Conservation Service (NRCS) should, in most instances, meet the minimum standard requirements of an NPDES permit.

Regulation: 40 CFR 122.23(c) [68 FR 7266]
Preamble: Sections IV.A.7 and 8 [68 FR 7198 and 7199]

What are the CAFO thresholds for specific animal sectors?

EPA has set thresholds for operations that confine different kinds of animals. The thresholds are used with discharge criteria to determine which AFOs are defined as Large or Medium CAFOs and which should be designated as Medium or Small CAFOs. Tables 1 through 12 show these thresholds.

The thresholds in the regulations are for the actual number of animals confined not the number of animals that could be confined. For example, if you raise cattle at a feedlot and you have the capacity to raise as many as 1,500 head at one time, but you never have more than 1,100 head at any one time, your operation confines 1,100 head. If you have 3 chicken houses, confine 25,000 chickens in each house, and produce 6 flocks of chickens each year, your operation still confines only 75,000 chickens at one time, even though you might produce half a million chickens each year.

If you confine more than one kind of animal at your operation, you should count each kind of animal separately. If you confine enough of any one kind of animal to meet the threshold for that animal sector (and your operation meets any other qualifying conditions), your operation is covered by the CAFO regulations. In this case, your permit will apply to the manure, litter, and process wastewater generated from all the animals confined at your operation, not just the sector that meets the size threshold. For example, if an AFO confines 800 beef cattle, 1,000 sows, and 150,000 broilers, the AFO is a Large CAFO because it meets the Large CAFO threshold for chicken operations. In this case, the permit applies to all manure, litter, and process wastewater produced by the confined broilers, sows, and beef cattle. The permit, however, would not apply to any animals pastured at this operation.

Regulation: 40 CFR 122.23(b)(4), (6), and (9) [68 FR 7265 and 7266]
Preamble: IV.A.3 [68 FR 7190]

Cattle (other than mature dairy cows)



Table 1. Cattle (other than mature dairy cows): size category thresholds

An AFO that has . . .	is a . . .	by . . .
at least 1,000 cattle, dairy heifers, cow/calf pairs, or veal calves	Large CAFO	regulatory definition
from 300 to 999 cattle, dairy heifers, cow/calf pairs, or veal calves and meets one of the medium category discharge criteria	Medium CAFO	
from 300 to 999 cattle, dairy heifers, cow/calf pairs, or veal calves and has been designated by the permitting authority	Medium CAFO	designation
fewer than 300 cattle, dairy heifers, cow/calf pairs, or veal calves and has been designated by the permitting authority	Small CAFO	

The thresholds in Table 1 apply to operations that confine any kind of cattle other than mature dairy cows, including heifers, steers, bulls, and cow/calf pairs. For example, these thresholds apply to beef cattle operations such as feedlots and backgrounding yards, veal calf operations, and contract dairy heifer operations. Except for cow/calf pairs, each animal is counted as one animal, regardless of its age or weight. In the case of cow/calf pairs, the pair is counted as one animal until the calf is weaned. After the calf is weaned, the cow and calf count as individual animals.

Example: An 850-head beef feedlot that also confines an additional 100 cow/calf pairs where the calves have not been weaned has 950 cattle other than mature dairy cows. This is not a Large CAFO. However, an 850-head beef feedlot that also confines an additional 100 cows and 100 weaned calves has 1,050 animals. This is a Large CAFO.

Mature dairy cows



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Swine (55 pounds or more)



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Table 2. Mature dairy cows: size category thresholds

An AFO that has ...	is a ...	by ...
at least 700 mature dairy cows	Large CAFO	regulatory definition
from 200 to 699 mature dairy cows and meets one of the medium category discharge criteria	Medium CAFO	
from 200 to 699 mature dairy cows and has been designated by the permitting authority	Medium CAFO	designation
fewer than 200 mature dairy cows and has been designated by the permitting authority	Small CAFO	

The thresholds in Table 2 apply to operations that confine mature dairy cows. Mature dairy cows include both milked and “dry” cows. Thresholds for AFOs that house any other kind of cattle, including heifers and veal calves, are shown in Table 1 (“Cattle (other than mature dairy cows): size category thresholds”).

Table 3. Swine (55 pounds or more): size category thresholds

An AFO that has ...	is a ...	by ...
at least 2,500 swine weighing 55 pounds or more	Large CAFO	regulatory definition
from 750 to 2,499 swine weighing 55 pounds or more and meets one of the medium category discharge criteria	Medium CAFO	
from 750 to 2,499 swine weighing 55 pounds or more and has been designated by the permitting authority	Medium CAFO	designation
fewer than 750 swine weighing 55 pounds or more and has been designated by the permitting authority	Small CAFO	

The thresholds in Table 3 apply to operations that confine swine that weigh at least 55 pounds. These operations include farrow-finish operations, wean-finish operations, farrowing operations, breeding operations, grow-finish operations, and other specialized AFOs that confine mature swine. AFOs that house immature swine (less than 55 pounds) might also be subject to the thresholds shown in Table 4 (“Swine (less than 55 pounds): size category thresholds”).

Swine (less than 55 pounds)



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Table 4. Swine (less than 55 pounds): size category thresholds

An AFO that has ...	is a ...	by ...
at least 10,000 swine weighing less than 55 pounds	Large CAFO	regulatory definition
from 3,000 to 9,999 swine weighing less than 55 pounds and meets one of the medium category discharge criteria	Medium CAFO	
from 3,000 to 9,999 swine weighing less than 55 pounds and has been designated by the permitting authority	Medium CAFO	designation
fewer than 3,000 swine weighing less than 55 pounds and has been designated by the permitting authority	Small CAFO	

The thresholds in Table 4 apply to operations that confine swine that weigh less than 55 pounds. These thresholds typically apply to swine nurseries, but they may also apply to other facilities that confine swine of all sizes but primarily confine large numbers of immature swine. For example, an operation with 1,000 sows, 50 boars, and 14,000 newborn pigs is a Large CAFO.

Remember that AFOs that house “mature” swine (55 pounds or more) are already subject to the thresholds in the sector “Swine (55 pounds or more)” (Table 3). So a swine operation could be defined as a CAFO because of the number of swine weighing 55 pounds or more, the number of swine weighing less than 55 pounds, or both.

What if I confine some swine that weigh more than 55 pounds and some that weigh less than 55 pounds? Assuming that your operation is already an AFO, the next step is to count the number of each type of animal on your operation. Does your operation confine more than 2,500 swine each weighing 55 pounds or more? Does your operation confine more than 10,000 swine each weighing less than 55 pounds? If the answer to either or both questions is yes, your AFO is defined as a Large CAFO.

Horses



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Table 5. Horses: size category thresholds

An AFO that has ...	is a ...	by ...
at least 500 horses	Large CAFO	regulatory definition
from 150 to 499 horses and meets one of the medium category discharge criteria	Medium CAFO	
from 150 to 499 horses and has been designated by the permitting authority	Medium CAFO	designation
fewer than 150 horses and has been designated by the permitting authority	Small CAFO	

The thresholds in Table 5 apply to operations that confine horses. The confinement area does not include areas like pastures. Most horse operations confine their animals only for short-term stabling or visits to stalls for shoeing, veterinary care, or similar activities. The horses might not be confined for enough days for the operation to meet the criteria for being an AFO. Data from the USDA National Animal Health Monitoring System suggest that practically all Large horse CAFOs (those with more than 500 horses in confinement) are racetracks.

Sheep or lambs



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Turkeys



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Table 6. Sheep or lambs: size category thresholds

An AFO that has ...	is a ...	by ...
at least 10,000 sheep or lambs	Large CAFO	regulatory definition
from 3,000 to 9,999 sheep or lambs and meets one of the medium category discharge criteria	Medium CAFO	
from 3,000 to 9,999 sheep or lambs and has been designated by the permitting authority	Medium CAFO	designation
fewer than 3,000 sheep or lambs and has been designated by the permitting authority	Small CAFO	

The thresholds in Table 6 apply to operations that confine sheep and/or lambs. You should count all confined sheep and lambs to determine whether your operation meets these thresholds. Confinement areas do not include grazing pastures. Operations with grazing areas might confine animals only for shearing, veterinary care, and lambing and before sale or processing. The animals might not be confined for enough days for the operation to be considered an AFO. Animals must be confined for 45 days or more in a 12-month period for an operation to be considered an AFO.

Table 7. Turkeys: size category thresholds

An AFO that has ...	is a ...	by ...
at least 55,000 turkeys	Large CAFO	regulatory definition
from 16,500 to 54,999 turkeys and meets one of the medium category discharge criteria	Medium CAFO	
from 16,500 to 54,999 turkeys and has been designated by the permitting authority	Medium CAFO	designation
fewer than 16,500 turkeys and has been designated by the permitting authority	Small CAFO	

The thresholds in Table 7 apply to operations that confine turkeys. Most turkey operations today confine their birds in confinement houses, but turkeys are also raised on lots. You should count all birds, including poults and breeders, to determine whether your operation meets the thresholds.

Chickens (operations with a liquid manure handling system)



USDA

Laying hens (operations with other than a liquid manure handling system)



USDA

Table 8. Chickens (operations with a liquid manure handling system): size category thresholds

An AFO that has ...	is a ...	by ...
at least 30,000 chickens and uses a liquid manure handling system	Large CAFO	regulatory definition
from 9,000 to 29,999 chickens, uses a liquid manure handling system, and meets one of the medium category discharge criteria	Medium CAFO	
from 9,000 to 29,999 chickens, uses a liquid manure handling system, and has been designated by the permitting authority	Medium CAFO	designation
fewer than 9,000 chickens, uses a liquid manure handling system, and has been designated by the permitting authority	Small CAFO	

The thresholds in Table 8 apply to operations that confine laying hens or broiler chickens **and** use a liquid manure handling system (like caged housing where manure is flushed to a lagoon). Liquid manure handling systems are relatively common among layer operations and are rarely used in other chicken operations. Operations that do not use liquid manure handling systems are subject to thresholds for the sector “Laying hens (operations with other than a liquid manure handling system)” (Table 9) or “Chickens other than laying hens (operations with other than a liquid manure handling system)” (Table 10). For pullets see “Chickens other than laying hens (operations with other than a liquid manure handling system)” (Table 10).

Table 9. Laying hens (operations with other than a liquid manure handling system): size category thresholds

An AFO that has ...	is a ...	by ...
at least 82,000 laying hens and does not use a liquid manure handling system	Large CAFO	regulatory definition
from 25,000 to 81,999 laying hens, does not use a liquid manure handling system, and meets one of the medium category discharge criteria	Medium CAFO	
from 25,000 to 81,999 laying hens, does not use a liquid manure handling system, and has been designated by the permitting authority	Medium CAFO	designation
fewer than 25,000 laying hens, does not use a liquid manure handling system, and has been designated by the permitting authority	Small CAFO	

The thresholds in Table 9 apply to layer operations that do not use a liquid manure handling system. These operations include scrape-out and belt manure handling systems, high-rise cage housing, and litter-based housing. A chicken operation that uses a liquid manure handling system is subject to thresholds for the sector “Chickens (operations with a liquid manure handling system)” (Table 8). Non-layer operations, including broiler operations, that do not use a liquid manure handling system are subject to thresholds in the sector “Chickens other than laying hens (operations with other than a liquid manure handling system)” (Table 10).

Chickens other than laying hens (operations with other than a liquid manure handling system)



USDA

Table 10. Chickens other than laying hens (operations with other than a liquid manure handling system): size category thresholds

An AFO that has . . .	is a . . .	by . . .
at least 125,000 chickens other than laying hens and does not use a liquid manure handling system	Large CAFO	regulatory definition
from 37,500 to 124,999 chickens other than laying hens, does not use a liquid manure handling system, and meets one of the medium category discharge criteria	Medium CAFO	
from 37,500 to 124,999 chickens other than laying hens, does not use a liquid manure handling system, and has been designated by the permitting authority	Medium CAFO	designation
fewer than 37,500 chickens other than laying hens, does not use a liquid manure handling system, and has been designated by the permitting authority	Small CAFO	

The thresholds in Table 10 apply to operations that confine broilers, roasters, pullets, or breeders **and** do not use a liquid manure handling system. These chicken operations typically use enclosed housing and dry litter systems. A chicken operation that uses a liquid manure handling system is subject to thresholds for the sector “Chickens (operations with a liquid manure handling system)” (Table 8). A layer operation that does not use a liquid manure handling system is subject to thresholds for the sector “Laying hens (operations with other than a liquid manure handling system)” (Table 9).

Example:

- A chicken operation produces 6 flocks of 100,000 broilers each year. The operation does not use a liquid manure handling system. Because the operation confines 100,000 broilers at a time, the operation is a Medium CAFO if it meets one of the two discharge criteria. (See “Which AFOs are defined as CAFOs?” on page 8 of this guide.)
- Another chicken operation has 60,000 laying hens and an additional 60,000 pullets and does not use a liquid manure handling system. This operation is also a Medium CAFO if it meets one of the discharge criteria.
- A third operation also has 60,000 laying hens and an additional 60,000 pullets. This operation uses a lagoon for manure storage, and thus it has a liquid manure handling system. This operation is a Large CAFO.

Chicken operations with uncovered litter stockpiles are treated as having liquid manure handling systems and are subject to the Large CAFO threshold of 30,000 chickens for operations with a liquid manure handling system. By covering such stockpiles, a chicken operation becomes eligible for the higher thresholds for operations with other than a liquid manure handling system. See the definitions of “liquid manure handling system” and “other than a liquid manure handling system” on page 16 of this guide.

Ducks (operations with a liquid manure handling system)

Table 11. Ducks (operations with a liquid manure handling system): size category thresholds

An AFO that has ...	is a ...	by ...
at least 5,000 ducks and uses a liquid manure handling system	Large CAFO	regulatory definition
from 1,500 to 4,999 ducks, uses a liquid manure handling system, and meets one of the medium category discharge criteria	Medium CAFO	
from 1,500 to 4,999 ducks, uses a liquid manure handling system, and has been designated by the permitting authority	Medium CAFO	designation
fewer than 1,500 ducks, uses a liquid manure handling system, and has been designated by the permitting authority	Small CAFO	

The thresholds in Table 11 apply to duck operations that use a liquid manure handling system. These include operations with “wet” lots, lots with storage ponds, lots with swimming areas, and operations that flush manure from confinement buildings to lagoons. You should count all birds to determine whether your operation meets the thresholds. A duck operation that does not use a liquid manure handling system is subject to thresholds for the sector “Ducks (operations with other than a liquid manure handling system)” (Table 12).

GLOSSARY
<p>What is a “liquid manure handling system”?</p> <p>The term <i>manure handling system</i> refers to the manure collection and storage practices used at a chicken or duck operation. Examples of a liquid manure handling system include</p> <ul style="list-style-type: none"> • An operation where ducks are raised outside with swimming areas or ponds, • An operation with a stream running through an open lot, or • An operation with confinement buildings where water is used to flush the manure to a lagoon, pond, or some other liquid storage structure. <p>In the CAFO regulations, the terms <i>wet lots</i>, <i>wet systems</i>, and <i>liquid manure handling systems</i> refer to the same set of management practices and are used interchangeably.</p> <p>AFOs with liquid manure handling systems are Large CAFOs if they have 30,000 laying hens or broilers or 5,000 ducks.</p>

Ducks (operations with other than a liquid manure handling system)

Table 12. Ducks (operations with other than a liquid manure handling system): size category thresholds

An AFO that has ...	is a ...	by ...
at least 30,000 ducks and does not use a liquid manure handling system	Large CAFO	regulatory definition
from 10,000 to 29,999 ducks, does not use a liquid manure handling system, and meets one of the medium category discharge criteria	Medium CAFO	
from 10,000 to 29,999 ducks, does not use a liquid manure handling system, and has been designated by the permitting authority	Medium CAFO	designation
fewer than 10,000 ducks, does not use a liquid manure handling system, and has been designated by the permitting authority	Small CAFO	

The thresholds in Table 12 apply to any duck operation that does not use a liquid manure handling system. You should count all birds to determine whether your operation meets the thresholds. A duck operation that uses a liquid

GLOSSARY
<p>What does “other than a liquid manure handling system” mean?</p> <p>The term <i>manure handling system</i> refers to the manure collection and storage practices used at a chicken or duck operation. Operations using the following practices are considered to have <i>other than a liquid manure handling system</i>:</p> <ul style="list-style-type: none"> • Confinement buildings with a mesh or slatted floor over a concrete pit where the manure is scraped, or • Dry bedding on a solid floor where the manure and bedding are not combined with water for flushing to a storage structure. <p>When chicken or duck operations use such practices and do not use any liquid manure handling systems, such as flushing to lagoons or storage ponds, these operations are considered to have <i>other than liquid manure handling systems</i>. They might also be called <i>dry manure systems</i> or <i>dry operations</i>.</p> <p>AFOs with other than liquid manure handling systems are Large CAFOs if they have 30,000 or more ducks, 82,000 or more laying hens, or 125,000 or more chickens other than laying hens.</p>

manure handling system is subject to thresholds for the sector “Ducks (operations with a liquid manure handling system)” (Table 11).

Are any other kinds of operations considered to be CAFOs?

An AFO with a kind of animal not identified in the regulations might be a CAFO. Animals not identified in the regulations include, for example, ostriches, llamas, or bison. The only way for such an AFO to be a CAFO is for the permitting authority to designate it as a CAFO. (See “Which AFOs may be designated as CAFOs?” on page 9 of this guide to find out how an operation can be designated as a CAFO.)

Are there any CAFOs that do not need a permit?

Large CAFOs that do not have the potential to discharge don’t need NPDES permits. Your Large CAFO doesn’t need an NPDES permit if (1) you provide evidence to your permitting authority that there is no potential for your operation to discharge manure, litter, or process wastewater to surface waters; (2) your permitting authority agrees; and (3) your permitting authority gives you notice that your CAFO has “no potential to discharge” manure, litter, or process wastewater. “No potential to discharge” means that the CAFO must not discharge manure, litter, or process

Medium and Small CAFOs cannot qualify for a “no potential to discharge” determination because those operations must have a discharge to be defined or designated as CAFOs in the first place.

wastewater from either the production areas or any land application areas to surface waters, even by accident or because of human error.

A Large CAFO can qualify for a “no potential to discharge” determination if

- The owner or operator can show that there is no possibility for any CAFO manure, litter, or wastewater to be added to surface waters under any circumstances or conditions.
- The operation has not had a discharge for at least the past 5 years.

The “no potential to discharge” status is intended to provide relief where there truly is no potential for a CAFO’s manure or wastewater to reach surface waters under any circumstances or conditions. For example, the operator of a CAFO that meets the following conditions might be able to demonstrate to the permitting authority that the CAFO has no potential to discharge:

- Located in an arid or semiarid environment.
- Stores all its manure or litter in a permanent, covered containment structure that precludes wind dispersal and prevents precipitation from contacting the manure or litter.
- Has sufficient containment to hold all process wastewater and contaminated storm water.
- Does not land apply CAFO manure or litter because, for example, the CAFO sends all its manure or litter to a regulated, off-site fertilizer plant or composting facility.

 Regulation: 40 CFR 122.23(f) [68 FR 7267]
Preamble: IV.B.2 [68 FR 7201]

How can I get a “no potential to discharge” determination?

If you believe your facility has no potential to discharge, you must still contact your permitting authority to find out whether you need to apply for a permit.

You may request a “no potential to discharge” determination from your permitting authority. You must make your request on or before your permit application deadline. “When do I have to get an NPDES permit?” on page 22 of this guide describes the permit application deadlines. You must show in your request that there is no possibility that your CAFO will discharge pollutants. Contact your permitting authority to find out exactly what information it needs. Your permitting authority might ask for more information and inspect your facility before it makes a decision on your request.

In most cases, land application of CAFO manure and process wastewater would be enough to indicate that a CAFO does have a potential to discharge. “No potential to discharge” might be demonstrated in limited circumstances, such as where the CAFO is so far from waters of the United States that any runoff from the land application areas could never reach them.

Your permitting authority has 90 days to decide whether to grant your request for a “no potential to discharge” determination. Your permitting authority will review your information and any other available information that helps it make a decision about whether your operation could discharge.

If your permitting authority agrees that your operation has no potential to discharge, it will issue a public notice before making a final decision. In the public notice, the permitting authority will describe the activity at your facility, the basis for granting your operation a “no potential to discharge” determination, and the procedures for reaching a final decision. During the public notice period, interested citizens will have a chance to submit comments to the permitting authority about your “no potential to discharge” request. At the end of the public notice period, your permitting authority will tell you whether it intends to issue a “no potential to discharge” determination for your CAFO.

The permitting authority will not grant your CAFO a “no potential to discharge” determination if

- An accident or human error could lead to a discharge or
- Your CAFO has had a discharge within the past 5 years.

If the permitting authority denies your request for a “no potential to discharge” determination, you must apply for an NPDES permit within 30 days after you receive notice of the denial.

What happens after I get a “no potential to discharge” determination?

If you receive a “no potential to discharge” determination for your CAFO, you must make sure that your operation does not discharge. If your operation does discharge, even with a “no potential to discharge” determination, you will be in violation of the Clean Water Act. If you’re planning to make changes at your CAFO that could lead to a discharge, you should contact your permitting authority to get an NPDES permit before you make those changes.

Your permitting authority may reverse the “no potential to discharge” determination if conditions at your facility change, new information is discovered, or the permitting authority has another reason to believe that your operation could discharge. If the permitting authority reverses the “no potential to discharge” determination, you must apply for a permit.

How can I avoid being covered by these regulations?

Large CAFO:

If you own or operate a Large CAFO, the only way to avoid the CAFO requirements is to request and be granted a “no potential to discharge” determination.

Medium AFO:

If you own or operate a medium-sized AFO, you can avoid having your operation defined or designated as a CAFO by

- Eliminating any condition that meets the discharge criteria (see “Which AFOs are defined as CAFOs?”, under the heading “Medium CAFOs” on page 8, and “Which AFOs may be designated as CAFOs?” on page 9 of this guide) **and**

- Reducing or eliminating your operation's discharges of pollutants to surface waters to minimize the chance that the permitting authority will find that your operation is a "significant contributor of pollutants to waters of the United States."

Small AFO:

If you own or operate a small-sized AFO, you can avoid having your operation designated as a CAFO by

- Eliminating any condition that meets the discharge criteria (see "Which AFOs may be designated as CAFOs?", under the heading "Small CAFOs" on page 9 of this guide.) **or**
- Reducing or eliminating your operation's discharges of pollutants to surface waters to minimize the chance that the permitting authority will find that your operation is a "significant contributor of pollutants to waters of the United States."

It is EPA's policy to promote state efforts to use non-NPDES programs to help medium and small AFOs protect water quality. EPA encourages you to take part in voluntary programs that promote sustainable agriculture and reduce environmental harm from AFOs. These programs can help owners or operators of medium- and small-sized AFOs reduce risks to water quality and avoid NPDES permitting requirements. For example, if you voluntarily develop and implement a CNMP using USDA's guidance, your CNMP might help you avoid the conditions that would cause your AFO to be regulated under the CAFO regulations. Funding is available for CNMP development through USDA's Environmental Quality Incentives Program (EQIP).

What parts of my CAFO are regulated?

The CAFO regulations apply to both the production areas and land application areas at your CAFO.

The production areas include all areas where you confine animals, store manure and raw materials, and contain wastes.

- Examples of areas where you might confine animals are open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, exercise yards, medication pens, walkers, animal walkways, and stables.



USDA NRCS

A confinement area for turkeys. The confinement area is considered part of the production area.

- Examples of areas where you might store manure are lagoons, runoff ponds, storage sheds, stockpiles, manure pits, liquid impoundments, static piles, and composting piles.
- Examples of areas where you might store raw materials are feed silos, silage bunkers, and storage areas for bedding materials.
- Examples of areas where you might contain wastes are lagoons, holding ponds, and evaporation ponds that you use to control runoff of rainwater from your animal confinement and manure storage areas.



USDA NRCS

Liquid manure being pumped onto a field.

An egg-washing or -processing facility is part

of the production area. Any area where you store, handle, treat, or dispose of dead animals is also part of the production area.

A land application area that is covered by the CAFO regulations is any land under your control where you apply or might apply manure, litter, or process wastewater. Land is under your control if you own, rent, or lease it, regardless of whether it is adjacent to the production area or at a different site.

▀ Regulation: 40 CFR 122.23(e) [68 FR 7267]
Preamble: IV.A.5 [68 FR 7196]

